

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB398 Of the printed Bill
Page 15 Section 7 Lines 14 1/2 Of the Engrossed Bill

By inserting a new Section 8 and Section 9 to read as follows:

(See attached)

And by renumbering subsequent sections of the bill.

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted:

Amendment submitted by: Steve Martin

Reading Clerk

1 "SECTION 8. AMENDATORY 15 O.S. 2001, Section 752, as
2 last amended by Section 1, Chapter 61, O.S.L. 2003 (15 O.S. Supp.
3 2010, Section 752), is amended to read as follows:

4 Section 752. As used in the Oklahoma Consumer Protection Act:

5 1. "Person" means a natural person, corporation, trust,
6 partnership, incorporated or unincorporated association, or any
7 other legal entity;

8 2. "Consumer transaction" means the advertising, offering for
9 sale or purchase, sale, purchase, or distribution of any services or
10 any property, tangible or intangible, real, personal, or mixed, or
11 any other article, commodity, or thing of value wherever located,
12 for purposes that are personal, household, or business oriented;

13 3. "Credit card" means any instrument or device, whether known
14 as a credit card, credit plate, charge plate or by any other name,
15 issued with or without fee by an issuer for the use of the
16 cardholder in obtaining money, goods, services or anything else of
17 value on credit. All credit cards lawfully issued shall be
18 considered the property of the cardholders or the issuer for all
19 purposes;

20 4. "Debit card" means any instrument or device, whether known
21 as a debit card or by any other name, issued with or without fee by
22 an issuer for the use of the cardholder in depositing, obtaining or
23 transferring funds from a consumer banking electronic facility;

1 5. "Documentary material" means the original or a copy of any
2 book, record, report, memorandum, paper, communication, tabulation,
3 map, chart, photograph, mechanical transcription, or other tangible
4 document or recording, wherever located;

5 6. "Examination" when used in reference to documentary material
6 includes the inspection, study, or copying of any such material, and
7 the taking of testimony under oath, or acknowledgment in respect to
8 any such documentary material or copy thereof;

9 7. "Merchandise" includes any object, ware, good, commodity,
10 intangible, real estate, or service;

11 8. "Closing out sale" means any offer to sell, or actual sale,
12 to the public of goods, wares, or merchandise on the implied or
13 direct representation that the sale is in anticipation of the
14 termination of a business at its present location, or that the sale
15 is being held other than in the ordinary course of business. It
16 also shall mean but shall not be limited to any sale held or
17 advertised as a "closing out sale", "going out of business sale",
18 "discontinuance of business sale", "quitting business sale", "sell
19 out", "liquidation", "loss of lease sale", "must vacate sale",
20 "forced out of business sale", "fire sale", "smoke and water damage
21 sale", "adjustment sale", "creditor's sale", "bankrupt sale",
22 "insolvent sale", "mortgage sale", or other like or similar title;

1 9. "Advertisement" means any advertisement or announcement
2 published in the news media including but not limited to the radio,
3 television, newspapers, handbills, and mailers;

4 10. "License" means the written authorization issued by the
5 court clerk of the district court in any county in this state to any
6 person to conduct a closing out sale;

7 11. "Clerk" means the court clerk of the district court of any
8 county of this state in which a person applying for a license
9 intends to conduct a closing out sale;

10 12. "Automatic dial announcing device" means automatic
11 equipment that:

12 a. stores telephone numbers to be called, or has a random
13 or sequential number generator capable of producing
14 numbers to be called,

15 b. conveys a prerecorded or synthesized voice message to
16 the number called, and

17 c. is used for the purpose of offering any goods or
18 services for sale or conveying information regarding
19 such goods or services;

20 13. "Deceptive trade practice" means a misrepresentation,
21 omission or other practice that has deceived or could reasonably be
22 expected to deceive or mislead a person to the detriment of that
23 person. Such a practice may occur before, during or after a
24 consumer transaction is entered into and may be written or oral;

1 14. "Unfair trade practice" means any practice which offends
2 established public policy or if the practice is immoral, unethical,
3 oppressive, unscrupulous or substantially injurious to consumers;

4 15. "Cemetery" means any land or structure in this state
5 dedicated to or used, or intended to be used, for the interment of
6 human remains; **and**

7 16. "Deceptive use of another's name in notification or
8 solicitation" occurs when a business, or a person acting on its
9 behalf, engages in the following activity:

- 10 a. through advertisement, solicitation or other
11 notification, either verbally or through any other
12 means, informs a consumer of the availability of any
13 type of goods or services that are not free,
- 14 b. the name of an unrelated and unaffiliated person is
15 mentioned in any manner,
- 16 c. the goods or services mentioned are not actually
17 provided by the unrelated and unaffiliated person
18 whose name is mentioned,
- 19 d. the business on whose behalf the notification or
20 solicitation is made does not have a consensual right
21 to mention the name of the unrelated and unaffiliated
22 person, and
- 23 e. neither the actual name nor trade name of the business
24 on whose behalf the notification or solicitation is

1 being made is stated, nor the actual name or trade
2 name of any actual provider of the goods or services
3 is stated, so as to clearly identify for the consumer
4 a name that is distinguishable and separate from the
5 name of the unrelated and unaffiliated person whose
6 name is mentioned in any manner in the notification or
7 solicitation, and thereby a misleading implication or
8 ambiguity is created, such that a consumer who is the
9 recipient of the advertisement, solicitation or
10 notification may reasonably but erroneously believe:

11 (1) that the goods or services whose availability is
12 mentioned are made available by or through the
13 unrelated and unaffiliated person whose name is
14 mentioned, or
15 (2) that the unrelated and unaffiliated person whose
16 name is mentioned is the one communicating with
17 the consumer; and

18 17. "Consumer laws" means the Oklahoma Consumer Protection Act

19 as well as the following: Section 1451 (Embezzlement), Section 1502
20 (Deceptive Advertising), Sections 1533.1 and 1533.2 (False
21 personation), Sections 1541.1 and 1541.2 (Obtaining or attempting to
22 obtain property by trick or deception), Section 1550.2 (Use of
23 credit and debit cards without consent), Sections 1550.21 through
24 1550.43 (Oklahoma Credit Card Crime Act of 1970) and Sections 1951

1 through 1981 (Computer Crimes Act) of Title 21 of the Oklahoma
2 Statutes.

3 SECTION 9. AMENDATORY 15 O.S. 2001, Section 753, as last
4 amended by Section 2, Chapter 61, O.S.L. 2003 (15 O.S. Supp. 2010,
5 Section 753), is amended to read as follows:

6 Section 753. A person engages in a practice which is declared
7 to be unlawful under the Oklahoma Consumer Protection Act, Section
8 751 et seq. of this title, when, in the course of the person's
9 business, the person:

10 1. Represents, knowingly or with reason to know, that the
11 subject of a consumer transaction is of a particular make or brand,
12 when it is of another;

13 2. Makes a false or misleading representation, knowingly or
14 with reason to know, as to the source, sponsorship, approval, or
15 certification of the subject of a consumer transaction;

16 3. Makes a false or misleading representation, knowingly or
17 with reason to know, as to affiliation, connection, association
18 with, or certification by another;

19 4. Makes a false or misleading representation or designation,
20 knowingly or with reason to know, of the geographic origin of the
21 subject of a consumer transaction;

22 5. Makes a false representation, knowingly or with reason to
23 know, as to the characteristics, ingredients, uses, benefits,
24 alterations, or quantities of the subject of a consumer transaction

1 or a false representation as to the sponsorship, approval, status,
2 affiliation or connection of a person therewith;

3 6. Represents, knowingly or with reason to know, that the
4 subject of a consumer transaction is original or new if the person
5 knows that it is reconditioned, reclaimed, used, or secondhand;

6 7. Represents, knowingly or with reason to know, that the
7 subject of a consumer transaction is of a particular standard, style
8 or model, if it is of another;

9 8. Advertises, knowingly or with reason to know, the subject of
10 a consumer transaction with intent not to sell it as advertised;

11 9. Advertises, knowingly or with reason to know, the subject of
12 a consumer transaction with intent not to supply reasonably expected
13 public demand, unless the advertisement discloses a limitation of
14 quantity;

15 10. Advertises under the guise of obtaining sales personnel
16 when in fact the purpose is to sell the subject of a consumer
17 transaction to the sales personnel applicants;

18 11. Makes false or misleading statements of fact, knowingly or
19 with reason to know, concerning the price of the subject of a
20 consumer transaction or the reason for, existence of, or amounts of
21 price reduction;

22 12. Employs "bait and switch" advertising, which consists of an
23 offer to sell the subject of a consumer transaction which the seller

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1 does not intend to sell, which advertising is accompanied by one or
2 more of the following practices:

3 a. refusal to show the subject of a consumer transaction
4 advertised,
5 b. disparagement of the advertised subject of a consumer
6 transaction or the terms of sale,
7 c. requiring undisclosed tie-in sales or other
8 undisclosed conditions to be met prior to selling the
9 advertised subject of a consumer transaction,
10 d. refusal to take orders for the subject of a consumer
11 transaction advertised for delivery within a
12 reasonable time,
13 e. showing or demonstrating defective subject of a
14 consumer transaction which the seller knows is
15 unusable or impracticable for the purpose set forth in
16 the advertisement,
17 f. accepting a deposit for the subject of a consumer
18 transaction and subsequently charging the buyer for a
19 higher priced item, or
20 g. willful failure to make deliveries of the subject of a
21 consumer transaction within a reasonable time or to
22 make a refund therefor upon the request of the
23 purchaser;

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1 13. Conducts a closing out sale without having first obtained a
2 license as required in this act, Section 751 et seq. of this title;

3 14. Resumes the business for which the closing out sale was
4 conducted within one (1) year from the expiration date of the
5 closing out sale license;

6 15. Falsely states, knowingly or with reason to know, that
7 services, replacements or repairs are needed;

8 16. Violates any provision of the Oklahoma Health Spa Act,
9 Section 2000 et seq. of Title 59 of the Oklahoma Statutes;

10 17. Violates any provision of the Home Repair Fraud Act,
11 Section 765.1 et seq. of this title;

12 18. Violates any provision of the Consumer Disclosure of Prizes
13 and Gifts Act, Section 996.1 et seq. of Title 21 of the Oklahoma
14 Statutes;

15 19. Violates any provision of Section 755.1 of this title or
16 Section 1847a of Title 21 of the Oklahoma Statutes;

17 20. Commits an unfair or deceptive trade practice as defined in
18 Section 752 of this title;

19 21. Violates any provision of Section 169.1 of Title 8 of the
20 Oklahoma Statutes in fraudulently or intentionally failing or
21 refusing to honor the contract to provide certain cemetery services
22 specified in the contract entered into pursuant to the Perpetual
23 Care Fund Act;

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1 22. Misrepresents a mail solicitation as an invoice or as a
2 billing statement;

3 23. Offers to purchase a mineral or royalty interest through an
4 offer that resembles an oil and gas lease and that the consumer
5 believed was an oil and gas lease;

6 24. Refuses to honor gift certificates, warranties, or any
7 other merchandise offered by a person in a consumer transaction
8 executed prior to the closing of the business of the person without
9 providing a purchaser a means of redeeming such merchandise or
10 ensuring the warranties offered will be honored by another person;

11 25. Knowingly causes a charge to be made by any billing method
12 to a consumer for services which the person knows was not authorized
13 in advance by the consumer;

14 26. Knowingly causes a charge to be made by any billing method
15 to a consumer for a product or products which the person knows was
16 not authorized in advance by the consumer;

17 27. Violates Section 752A of this title;

18 28. Makes deceptive use of another's name in notification or
19 solicitation, as defined in Section 752 of this title;

20 29. Falsely states or implies that any person, product or
21 service is recommended or endorsed by a named third person; ~~or~~

22 30. Falsely states that information about the consumer,
23 including but not limited to, the name, address or phone number of

1 the consumer has been provided by a third person, whether that
2 person is named or unnamed;

3 31. Acting as a debt collector, contacts a debtor and threatens
4 to file a suit against the debtor over a debt barred by the statute
5 of limitations which has passed for filing suit for such debt; or

6 32. Acting as a debt collector, contacts a debtor and uses
7 obscene or profane language to collect a debt."

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13 2. Makes a false or misleading representation, knowingly or
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15 certification of the subject of a consumer transaction;

16 3. Makes a false or misleading representation, knowingly or
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19 4. Makes a false or misleading representation or designation,
20 knowingly or with reason to know, of the geographic origin of the
21 subject of a consumer transaction;

22 5. Makes a false representation, knowingly or with reason to
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24 alterations, or quantities of the subject of a consumer transaction

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4 conducted within one (1) year from the expiration date of the
5 closing out sale license;

6 15. Falsely states, knowingly or with reason to know, that
7 services, replacements or repairs are needed;

8 16. Violates any provision of the Oklahoma Health Spa Act,
9 Section 2000 et seq. of Title 59 of the Oklahoma Statutes;

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23 Care Fund Act;

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2 billing statement;

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4 offer that resembles an oil and gas lease and that the consumer
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